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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,600	02/19/2002	Zbigniew G. Lassota	FET-25	5525

28439 7590 05/11/2004

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EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/078,600	Applicant(s) LASSOTA ET AL.	
	Examiner Anthony Weier	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-70 is/are pending in the application.
- 4a) Of the above claim(s) 29-56 and 64-70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 19, 23-26, 57, 58, and 60-63 is/are rejected.
- 7) ☐ Claim(s) 9-18, 20-22, 27, 28 and 59 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of Group I in the paper filed 2/23/04 is acknowledged. The traversal is on the ground(s) that the apparatus and method claims employ virtually the same language and limitations. This is not found persuasive because the claims are not identical in language and, because of the nature of each invention, would require different search strategies and areas of search.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-28 are 1-10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 11, the word "abstract" is confusing. It appears that "extract" may have been intended.

In claim 5, "the solenoid controlled brew valve" lacks antecedent basis.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Vitous, Stover, and Goerndt and further taken with Muis.

Any one of Vitous, Stover, and Goerndt discloses preparation of a beverage brew wherein said brew is then diluted (see Figures in all) and wherein all of same include control and valve means .

Vitous, Stover, and Goerndt are silent regarding the use of a flow meter and controller responsive to the flow meter for selectively controlling the delivery of water to the brew basket or vessel. However, such is well known as taught, for example, by Muis which teaches the use of a flow meter which relays information to a controller which controls shut-off valves that deliver water to the brewing chamber (see Figure 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated such controlling means with flow meter in the apparatus of any one of Vitous, Stover, and Goerndt to provide a more consistent brew and, as taught by Muis to provide better interaction between the extracting liquid and the product to be extracted by causing pulsating of the delivered liquid due to the continuous regulation of same by use of the flow meter and controller (e.g. col. 2).

4. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Vitous or Stover and further taken with Muis.

Either one of Vitous or Stover discloses preparation of a beverage brew wherein said brew is then diluted (see Figures in all) and further sets forth the use of a brewing

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tank, a siphon connection as called for in the instant claims, water tank heating elements, a solenoid controlled brew valve controlling consistent water delivery to the brew basket, and a liquid level probe (see 114 in Stover and in Vitous as pertaining to prior art, see col. 1, lines 13-28). With regard to Vitous and the liquid level probe, although the invention therein seeks to eliminate the need for same, it is described in the "Background" (i.e. col. 1), and it would have been obvious to one having ordinary skill in the art at the time of the invention to have included same as a known alternative (albeit less desirable) prior art mode of operation.

Vitous and Stover are silent regarding the use of a flow meter and controller responsive to the flow meter for selectively controlling the delivery of water to the brew basket or vessel. However, such is well known as taught, of example, by Muis which teaches the use of a flow meter which relays information to a controller which controls shut-off valves that deliver water to the brewing chamber (see Figure 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated such controlling means with flow meter in the apparatus of either one of Vitous and Stover to provide a more consistent brew and, as taught by Muis to provide better interaction between the extracting liquid and the product to be extracted by causing pulsating of the delivered liquid due to the continuous regulation of same by use of the flow meter and controller (e.g. col. 2).

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goerndt taken with Muis (as set forth in paragraph 3).

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Goerndt discloses preparation of a beverage brew wherein said brew is then diluted (see Figures in all) and wherein same includes control and valve means. In addition, Goerndt discloses control valves for the brewing water and the dilution water wherein same may be controlled to prevent both being open at the same time (see col. 3).

Goerndt is silent regarding the use of a flow meter and controller responsive to the flow meter for selectively controlling the delivery of water to the brew basket or vessel. However, such is well known as taught, for example, by Muis which teaches the use of a flow meter which relays information to a controller which controls shut-off valves that deliver water to the brewing chamber (see Figure 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated such controlling means with flow meter in the apparatus of Goerndt to provide a more consistent brew and, as taught by Muis to provide better interaction between the extracting liquid and the product to be extracted by causing pulsating of the delivered liquid due to the continuous regulation of same by use of the flow meter and controller (e.g. col. 2).

6. Claims 7, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Vitous, Stover, and Goerndt and further taken with Muis (as set forth in paragraph 3) and Bunn et al (U.S. Patent No. 5255593).

The claims further call for the use of a brew tank with side and bottom wherein a controlled brew valve is connected to the side of the brew water tank adjacent the bottom of the brew water tank, and the siphon connection is connected to the brew

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water tank adjacent the top of the brew water tank. Bunn et al teaches a siphon connected toward the top of the tank and a inlet connected near the side of the tank adjacent the bottom wherein an inlet control valve is nearby. Although Bunn et al does not teach said control valve being connected to the tank and that said siphon is connected adjacent the top (as opposed to merely near the top as it is shown, see Figures), such differences are not seen as patentable distinctions. Clearly, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified these equipment arrangements as a matter of preference depending on, for example, space availability. In addition, Bunn et al sets forth an alternative brew water tank assembly, and it would have been further obvious to have incorporated same in the apparatuses of any one of Vitous, Stover, Bunn, or Goerndt as a known alternative brew water tank assembly as a matter of preference.

7. Claims 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vitous taken with Muis.

Vitous discloses a brew device wherein a brew is created and then diluted (see Figures) and same includes control and valve means and wherein said brew device includes an electrical heater (40) for heating cool tap water delivered to the brew water tank to a preselected temperature.

Vitous is silent regarding the use of a flow meter and controller responsive to the flow meter for selectively controlling the delivery of water to the brew basket or vessel. However, such is well known as taught, for example, by Muis which teaches the use of a flow meter which relays information to a controller which controls shut-off valves that

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deliver water to the brewing chamber (see Figure 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated such controlling means with flow meter in the apparatus of Vitous to provide a more consistent brew and, as taught by Muis to provide better interaction between the extracting liquid and the product to be extracted by causing pulsating of the delivered liquid due to the continuous regulation of same by use of the flow meter and controller (e.g. col. 2).

8. Claims 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Stover or Goerndt (as in paragraph 3) and further taken with Muis and Vitous.

Even though Stover and Goerndt both disclose brew water tanks or vessels which contain hot water, the references are silent as to how the water is made hot. However, it is notoriously well known in the coffee/tea apparatus art that brew water tanks may be heated electrically. Vitous, for example, teaches same as a conventional manner for heating water in a brew water tank. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included same as a matter of preference for a known alternative tank heating means in the prior art.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.



Claims 57 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Muis.

Muis discloses a brewer device comprising means for measuring with a flow meter a quantity of water being passed to the brewer from an external source (i.e. tap water) and a means for controlling water distribution in response to the measuring means (valve 9; see Figure 1). Muis also discloses a controller (i.e. computer) that stores a preselected quantity of flow and inherently uses same to compare current data to regulate the flow rate water used for brewing (8; see Figure 1).

10. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Muis taken together with Silverman et al.

Muis is silent regarding the particular flow meter used. Claim 58 calls for a paddle-wheel type of flow meter with an electrical or electromagnetic outlet for measuring paddle revolutions. However, such are well known as taught, for example, by Silverman et al. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such type of flow meter in the brewer device of Muis for its art recognized advantages, such as providing more accurate readings and reducing the back pressure that occurs when using other flow meters (see col. 2).

11. Claims 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muis taken together with Vitous.

Muis discloses a brewer device comprising means for measuring with a flow meter a quantity of water being passed to the brewer from an external source (i.e. tap water) and a means for controlling water distribution in response to the measuring

means (valve 9; see Figure 1). Muis also discloses a controller (i.e. computer) that stores a preselected quantity of flow and inherently uses same to compare current data to regulate the flow rate water used for brewing (8; see Figure 1).

Muis is silent regarding the presence of both a brew basket and mixing chamber and controlling means for varying the proportion of water delivered to each and also the ability to maintain the proportional amount but change the overall amount of water delivered. Such means are known as taught, for example, in Vitous (see cols. 10 and 11) wherein Vitous includes means for controlling the entire flow of water (proportion of dilution and brew water staying the same; see col. 10, lines 43-49) as well as varying the proportion of water going to each (col. 11, lines 17-26). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included such means in the device of Muis as a way to create beverages which are more consistent (regardless of total amount produced) or differ according to individual taste in the final product (e.g. ability to add more diluting water and less brew water).

***Allowable Subject Matter***

12. Claims 9-18, 20-22, 27, 28, and 59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record does not disclose nor teach the use of flow meters and control means for both the brew water and the dilution water and the controlled interaction of each based on data from the flow meters as specifically set forth in the instant claims.

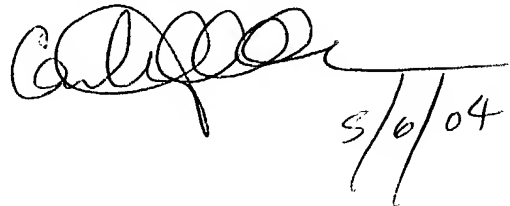
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier  
May 6, 2004

Anthony Weier  
Primary Examiner  
Art Unit 1761



5/6/04